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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,422	04/10/2001	Luke Surazski	2705-150	9550

20575 7590 02/09/2007  
MARGER JOHNSON & MCCOLLOM, P.C.  
210 SW MORRISON STREET, SUITE 400  
PORTLAND, OR 97204

EXAMINER
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JACOBS, LASHONDA T

ART UNIT	PAPER NUMBER
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2157

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/09/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/832,422

Applicant(s)

SURAZSKI, LUKE

Examiner

LaShonda T. Jacobs

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3, 4, 10, 11, 20, 21, 32 and 33 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5-9, 12-19, 22-31 and 34-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

This is a Final Office Action in response to Applicant Amendment/Request for Reconsideration filed on November 20, 2006. Claims 1-42 are pending. Claims 3, 4, 10, 11, 20, 21, 32 and 33 have been allowed. Claims 1, 2, 5-9, 12-19, 22-31 and 34-42 are presented for further examination.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims **1, 2, 5-9, 12-19, 22-31 and 34-42** are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuster et al (hereinafter, "Schuster", U.S. Pat. No. 6,360,271) in view of Brent et al (hereinafter, "Brent", U.S. Pat. No. 6,990,112).

As per claims **1, 8, 19 and 30**, Schuster discloses a device, an article and method comprising:

- a network interface for coupling to a network (col. 14, lines 34-51);
- a memory (col. 14, lines 34-51); and
- a processor coupled with the network interface (col. 14, lines 34-51),

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- retrieve a first jitter record for the first network region (col. 11, lines 48-58 and col. 12, lines 10-27); and

However, Schuster does not explicitly disclose:

- a first connection through the network with a first endpoint in a first region of said network; and
- allocate a first portion of a memory for jitter buffer storage for the first connection; the first portion having a size in accordance with first jitter data in the first jitter record.

Brent discloses methods and apparatus for data communications on packet networks comprising:

- a first connection through the network with a first endpoint in a first region of said network (col. 4, lines 29-47 and col.6, lines 50-61); and
- allocate a first portion of a memory for jitter buffer storage for the first connection; the first portion having a size in accordance with first jitter data in the first jitter record (col. 4, lines 29-47, col. 6, lines 50-61 and col. 8, lines 45-62).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Schuster by incorporating or implementing jitter buffer settings to determine the maximum delays for each endpoint thereby providing reliable data communications through packet networks for voice-band communications.

As per claims 2, 9, 13, 31 and 35, Schuster discloses:

- wherein the first connection is a VoIP connection (col. 6, lines 53-65).

As per claims 5, 12, 22 and 34, Schuster discloses:

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- wherein the first jitter data contains a first jitter performance statistic of a formerly tracked jitter of at least one endpoint in the first network region (col. 11, lines 20-30 and lines 48-58).

As per claims 6, 14, 16, 23, 27, 36 and 40, Schuster discloses:

- wherein the first jitter performance statistic is determined from at least one of a cumulative average jitter and a cumulative jitter variability (col. 12, lines 10-27).

As per claim 7, 15, 26 and 39, Schuster discloses wherein the processor is further adapted to:

- establish the first connection (col. 6, lines 53-65);
- track a jitter while communicating over the first connection (col. 11, lines 20-30 and lines 48-58); and
- update the first jitter performance statistic in accordance with the tracked jitter (col. 12, lines 43-55).

As per claims 17, 28 and 41, Schuster further discloses:

- means for storing the updated jitter statistic (col. 12, lines 43-55).

As per claims 18, 29 and 42, Schuster further discloses:

- means for updating the first portion to have a size in accordance with the updated first jitter performance statistic (col. 12, lines 43-55).

As per claims 24, 25, 37 and 38, Schuster discloses:

- wherein the first jitter performance statistic is dependent upon a time of a day (col. 12, lines 56-67 and col. 13, lines 1-5), and wherein the instructions further result in:
- inputting the time of the day (col. 12, lines 56-67 and col. 13, lines 1-5).

***Response to Arguments***

3. Applicant's arguments filed November 20, 2006 have been fully considered but they are not persuasive.

**The Office Notes following arguments:**

- a. There is no suggestion, whatsoever, in the Schuster reference of setting the size of a jitter buffer for particular path based upon jitter record of the region of the network region where the endpoint of the path is located as required by applicants claims.
- b. There is no suggestion in the Brent reference of retrieving a jitter record for a region that is the end point of a network connection and setting the size of a jitter buffer in accordance with first jitter data in the retrieved jitter record.

**In response to:**

(a)-(b). Applicant argues that Schuster nor Brent does suggest setting the size of a jitter buffer for particular path based upon jitter record of the region of the network region where the endpoint of the path is located as required by applicant's claims. However, the Examiner disagrees. The Schuster reference was not relied upon to teach this limitation of the applicant's claim invention. However, the Brent reference was used to show teachings of setting the size of a jitter buffer for particular path based upon jitter record of the region of the network region where the endpoint of the path is located as required by applicant's claims. Brent discloses methods and apparatus for data communications on packet networks in which the jitter buffer settings is utilized to provide a delay signal for voice communications. The jitter buffer delay is also set to allow the maximum delays required for routing packets between modems. The delay for routing packets between the modems is based on statistics from other packets that arrive too

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late or lost. By giving the broadest interpretation of the applicant's claim language, Schuster and Brent does teach setting the size of a jitter buffer for particular path based upon jitter record of the region of the network region where the endpoint of the path is located as required by applicant's claims.

*Allowable Subject Matter*

4. Claims 3, 4, 10, 11, 20, 21, 32 and 33 are allowed.

*Conclusion*

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaShonda T. Jacobs whose telephone number is 571-272-4004. The examiner can normally be reached on 8:30 A.M.-5:00 P.M..

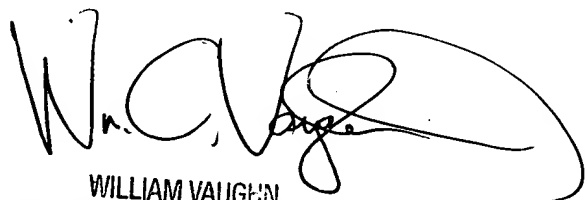
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ltj  
February 2, 2007

LaShonda T Jacobs  
Examiner  
Art Unit 2157

  
WILLIAM VAUGHN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2